

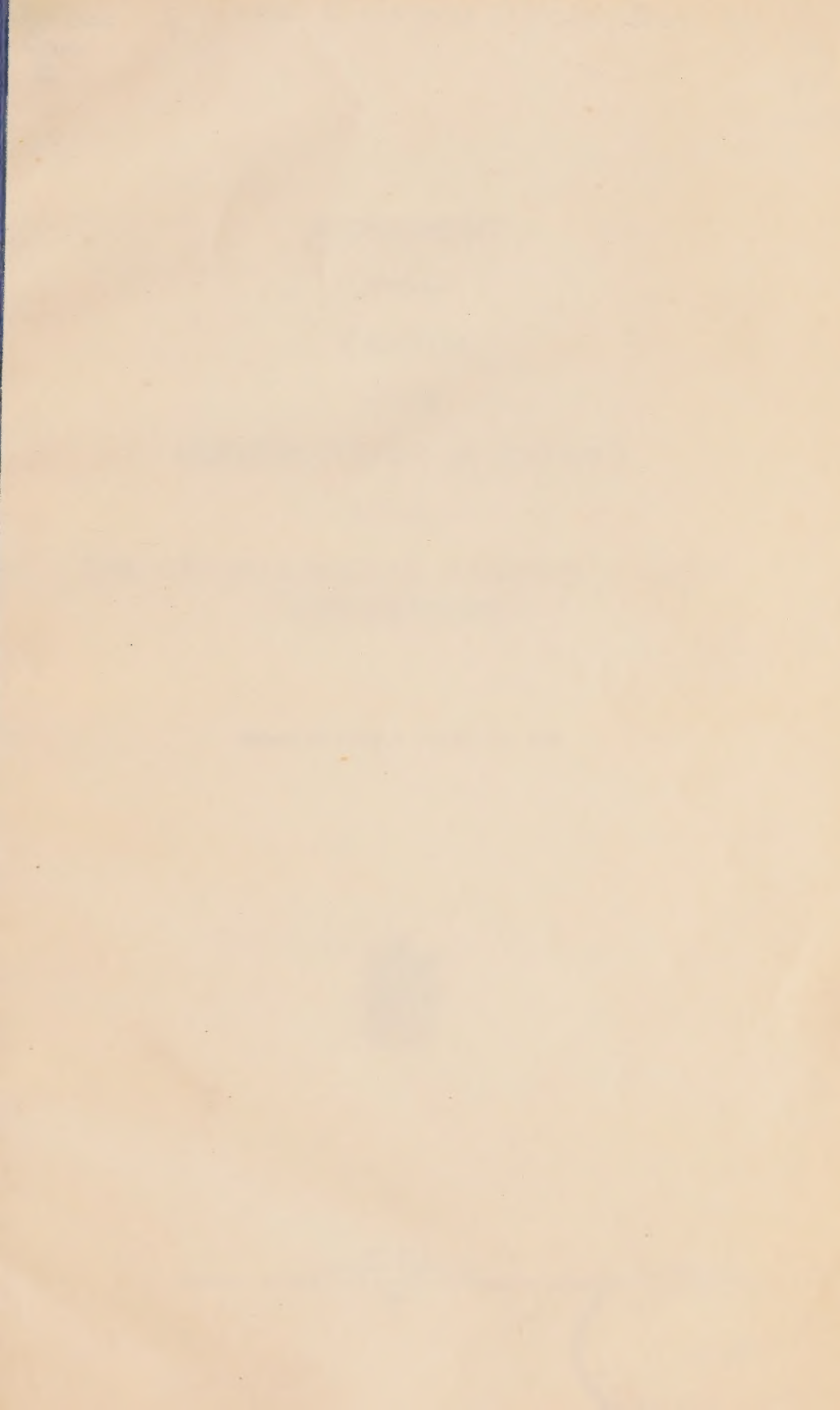
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Agreement between Canada and
the United States of America
relating to the Great Lakes--
St. Lawrence Basin development,
signed at Ottawa, March 19,
1941.



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AGREEMENT

BETWEEN

CANADA

AND THE

UNITED STATES OF AMERICA

RELATING TO


THE GREAT LAKES-ST. LAWRENCE BASIN
DEVELOPMENT

Signed at Ottawa March 19, 1941



OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1941





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**AGREEMENT BETWEEN CANADA AND THE UNITED STATES OF
AMERICA RELATING TO THE GREAT LAKES-ST. LAWRENCE
BASIN DEVELOPMENT, OTTAWA, MARCH 19, 1941**

His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, in respect of Canada, and the President of the United States of America, have decided to conclude an Agreement in relation to the utilization of the water in the Great Lakes-St. Lawrence Basin and to that end have named as their respective plenipotentiaries:

His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, for Canada:

The Right Honourable W. L. MACKENZIE KING,
Prime Minister, President of the Privy Council and Secretary of
State for External Affairs;

The Honourable CLARENCE D. HOWE,
Minister of Munitions and Supply;

JOHN E. READ,
Legal Adviser, Department of External Affairs;

The President of the United States of America:

JAY PIERREPONT MOFFAT,
Envoy Extraordinary and Minister Plenipotentiary of the United
States of America to Canada;

ADOLF AUGUSTUS BERLE, Jr.,
Assistant Secretary of State;

LELAND OLDS,
Chairman of the Federal Power Commission;

Who, after having communicated to each other their full powers, found in good and due form, have agreed upon the following Articles.

PRELIMINARY ARTICLE

For the purposes of the present Agreement, unless otherwise expressly provided, the expression:

(a) "Joint Board of Engineers" means the board appointed pursuant to an agreement between the Governments following the recommendation of the International Joint Commission, dated December 19, 1921;

(b) "Great Lakes System" means Lakes Superior, Michigan, Huron (including Georgian Bay), Erie and Ontario, and the connecting waters, including Lake St. Clair;

(c) "St. Lawrence River" includes the river channels and the lakes forming parts of the river channels from the outlet of Lake Ontario to the sea;

(d) "International Section" means that part of the St. Lawrence River through which the international boundary line runs;

(e) "Canadian Section" means that part of the St. Lawrence River which lies wholly within Canada and which extends from the easterly limit of the International Section to Montreal Harbour;

(f) "International Rapids Section" means that part of the International Section which extends from Chimney Point to the village of St. Regis;

(g) "Governments" means the Government of the United States of America and the Government of Canada;

(h) "countries" means the United States of America and Canada;

(i) "Special International Niagara Board" means the board appointed by the Governments in 1926 to ascertain and recommend ways and means to preserve the scenic beauty of the Niagara Falls;

(j) "deep waterway" means adequate provision for navigation requiring a controlling channel depth of 27 feet with a depth of 30 feet over lock sills, from the head of the Great Lakes to Montreal Harbour via the Great Lakes System and St. Lawrence River, in general accordance with the specifications set forth in the Report of the Joint Board of Engineers, dated November 16, 1926.

ARTICLE I

1. The Governments agree to establish and maintain a Great Lakes-St. Lawrence Basin Commission, hereinafter referred to as the Commission, consisting of not more than ten members of whom an equal number shall be appointed by each Government. The duties of the Commission shall be:

(a) to prepare and to recommend plans and specifications for the construction of works in the International Rapids Section in accordance with and containing the features described in the Annex attached to and made part of this Agreement, with such modifications as may be agreed upon by the Governments;

(b) upon approval of the plans and specifications by the Governments, to prepare a schedule allocating the construction of the works in the International Rapids Section on such a basis that each Government shall construct the works within its own territory or an equivalent proportion of the works so approved;

(c) to approve all contracts entered into on behalf of either Government for the works in the International Rapids Section;

(d) to supervise the construction of the works and to submit reports to the Governments from time to time, and at least once each calendar year, on the progress of the works;

(e) upon satisfactory completion of the works, to certify to the Governments that they meet the plans and specifications drawn up by the Commission and approved by the Governments;

(f) to perform the other duties assigned to it in this Agreement.

2. The Commission shall have the authority to employ such persons and to make such expenditures as may be necessary to carry out the duties set forth in this Agreement. It shall have the authority to avail itself of the services of such governmental agencies, officers and employees of either country as may be made available. The remuneration, general expenses and all other expenses of its members shall be regulated and paid by their respective Governments; and the other expenses of the Commission, except as provided for under Article III, paragraph (b) of this Agreement, shall be borne by the Governments in equal moieties.

3. The Governments agree to permit the entry into their respective countries, within areas immediately adjacent to the Niagara River and the International Section to be delimited by exchange of notes, of personnel employed by the Commission or employed in the construction of the works, and to exempt such personnel from the operation of their immigration laws and regulations within the areas so delimited. In the event that the Commission, pursuant to the provisions of paragraph 1 (b) of this Article, allocates to either of the Governments the construction of works, any part of which is within the territory of the other Government, the latter Government shall make provision for the according, within the area in which such a part is situated, of such exemption from customs, excise and other imposts, federal, state and provincial, as may be reasonably practicable for the effective and economical prosecution of the work. Regulations providing for such exemptions may be settled by the Governments by exchange of notes.

4. The Governments shall, by exchange of notes, prescribe rules and regulations for the conduct of the Commission. They may by the same means extend or abridge its powers and duties; and reduce or after reduction increase the number of members (provided that there must always be an equal number appointed by each Government and that the total number of members shall at no time exceed ten); and, upon completion of its duties, the Governments may terminate its existence.

ARTICLE II

The Government of Canada agrees:

(a) in accordance with the plans and specifications prepared by the Commission and approved by the Governments, to construct the works in the International Rapids Section allocated to Canada by the Commission; and to operate and maintain or arrange for the operation and maintenance of the works situated in the territory of Canada;

(b) to complete, not later than December 31, 1948, the essential Canadian links in the deep waterway, including the necessary deepening of the new Welland Ship Canal and the construction of canals and other works to provide the necessary depth in the Canadian Section of the St. Lawrence River; provided that, if the continuance of war conditions or the requirements of defence justify a modification of the period within which such works shall be completed, the Governments may, by exchange of notes, arrange to defer or expedite their completion as circumstances may require.

ARTICLE III

The Government of the United States of America agrees:

(a) in accordance with the plans and specifications prepared by the Commission and approved by the Governments, to construct the works in the International Rapids Section allocated to the United States of America by the Commission; and to operate and maintain or arrange for the operation and maintenance of the works situated in the territory of the United States of America;

(b) to provide, as required by the progress of the works, funds for the construction, including design and supervision, of all works in the International

Rapids Section except (1) machinery and equipment for the development of power, and (2) works required for rehabilitation on the Canadian side of the international boundary;

(c) not later than the date of completion of the essential Canadian links in the deep waterway, to complete the works allocated to it in the International Rapids Section and the works in the Great Lakes System above Lake Erie required to create essential links in the deep waterway.

ARTICLE IV

The Governments agree that:

(a) they may, in their respective territories, in conformity with the general plans for the project in the International Rapids Section, install or arrange for the installation of such machinery and equipment as may be desired for the development of power and at such time or times as may be most suitable in terms of their respective power requirements;

(b) in view of the need for co-ordination of the plans and specifications prepared by the Commission for general works in the International Rapids Section with plans for the development of power in the respective countries, the Commission may arrange for engineering services with any agency in either country which may be authorized to develop power in the International Rapids Section;

(c) except as modified by the provisions of Article VIII, paragraph (b) of this Agreement, each country shall be entitled to utilize one-half of the water available for power purposes in the International Rapids Section;

(d) during the construction and upon the completion of the works provided for in the International Rapids Section, the flow of water out of Lake Ontario into the St. Lawrence River shall be controlled and the flow of water through the International Section shall be regulated so that the navigable depths of water for shipping in the harbour of Montreal and throughout the navigable channel of the St. Lawrence River below Montreal, as such depths now exist or may hereafter be increased by dredging or other harbour or channel improvements, shall not be injuriously affected by the construction or operation of such works, and the power developments in the Canadian Section of the St. Lawrence River shall not be adversely affected;

(e) upon the completion of the works provided for in the International Rapids Section, the power works shall be operated, initially, with the water level at the power houses held at a maximum elevation 238·0, sea level datum as defined in the Report of the Joint Board of Engineers, for a test period of ten years or such shorter period as may be approved by any board or authority designated or established under the provisions of paragraph (f) of this Article; and, in the event that such board or authority considers that operation with the water level at the power houses held to a maximum elevation exceeding 238·0 would be practicable and could be made effective within the limitations prescribed by paragraphs (c) and (d) of this Article, the Governments may, by exchange of notes, authorize operation, subject to the provisions of this Article, and for such times and subject to such terms as may be prescribed in the notes, at a maximum elevation exceeding 238·0;

(f) the Governments may, by exchange of notes, make provision for giving effect to paragraphs (c), (d) and (e) of this Article;

(g) during the construction of the works provided for in the International Rapids Section, facilities for 14 ft. navigation in that Section shall be maintained.

ARTICLE V

The Governments agree that nothing done under the authority of this Agreement shall confer upon either of them proprietary rights, or legislative, administrative or other jurisdiction, in the territory of the other, and that the works constructed under the provisions of this Agreement shall constitute a part of the territory of the country in which they are situated.

ARTICLE VI

The Governments agree that either of them may proceed at any time to construct, within its own territory and at its own cost, alternative canal and channel facilities for navigation in the International Section or in waters connecting the Great Lakes, and to utilize the water necessary for the operation of such facilities.

ARTICLE VII

The High Contracting Parties agree that the rights of navigation accorded under the provisions of existing treaties between the United States of America and His Majesty shall be maintained notwithstanding the provisions for termination contained in any of such treaties, and declare that these treaties confer upon the citizens or subjects and upon the ships, vessels and boats of each High Contracting Party, rights of navigation in the St. Lawrence River, and the Great Lakes System, including the canals now existing or which may hereafter be constructed.

ARTICLE VIII

The Governments, recognizing their common interest in the preservation of the levels of the Great Lakes System, agree that:

(a) each Government in its own territory shall measure the quantities of water which at any point are diverted from or added to the Great Lakes System, and shall place such measurements on record with the other Government semi-annually;

(b) in the event of diversions being made into the Great Lakes System from other watersheds lying wholly within the borders of either country, the exclusive rights to the use of waters which are determined by the Governments to be equivalent in quantity to any waters so diverted shall, notwithstanding the provisions of Article IV, paragraph (c) of this Agreement, be vested in the country diverting such waters, and the quantity of water so diverted shall be at all times available to that country for use for power below the point of entry, so long as it constitutes a part of boundary waters;

(c) if any diversion of water from the Great Lakes System or the International Section, other or greater in amount than diversions permitted in either of the countries on January 1, 1940, is authorized, the Government of such country agrees to give immediate consideration to any representations respecting the matter which the other Government may make; if it is impossible otherwise to reach a satisfactory settlement, the Government of the country

in which the diversion of water has been authorized agrees, on the request of the other Government, to submit the matter to an arbitral tribunal which shall be empowered to direct such compensatory or remedial measures as it may deem just and equitable; the arbitral tribunal shall consist of three members, one to be appointed by each of the Governments, and the third, who will be the chairman, to be selected by the Governments;

(d) the Commission shall report upon the desirability of works for compensation and regulation in the Great Lakes System, and, upon the approval by the Governments of any such works, shall prepare plans and specifications for their construction and recommend to the Governments an equitable allocation of their cost; the Governments shall make arrangements by exchange of notes for the construction of such works as they may agree upon.

ARTICLE IX

The Governments, recognizing their primary obligation to preserve and enhance the scenic beauty of the Niagara Falls and River, and consistent with that obligation, their common interest in providing for the most beneficial use of the waters of that River, as envisaged in the Final Report of the Special International Niagara Board, agree that:

(a) the Commission shall prepare and submit to the Governments plans and specifications for works in the Niagara River designed to distribute and control the waters thereof, to prevent erosion and to ensure at all seasons unbroken crest lines on both the American Falls and the Canadian Falls and to preserve and enhance their scenic beauty, taking into account the recommendations of the Special International Niagara Board; the Governments may make arrangements by exchange of notes for the construction of such works in the Niagara River as they may agree upon, including provision for temporary diversions of the waters of the Niagara River for the purpose of facilitating construction of the works; the cost of such works in the Niagara River shall be borne by the Governments in equal moieties;

(b) upon the completion of the works authorized in this Article, diversions of the waters of the Niagara River above the Falls from the natural course and stream thereof additional to the amounts specified in Article 5 of the Boundary Waters Treaty of 1909 may be authorized and permitted by the Government to the extent and in the manner hereinafter provided:

(1) the United States may authorize and permit additional diversion within the State of New York of the waters of the River above the Falls for power purposes, in excess of the amount specified in Article 5 of the Boundary Waters Treaty of 1909, not to exceed in the aggregate a daily diversion at the rate of five thousand cubic feet of water per second;

(2) Canada may authorize and permit additional diversion within the Province of Ontario of the waters of the River above the Falls for power purposes, in excess of the amount specified in Article 5 of the Boundary Waters Treaty of 1909, not to exceed in the aggregate a daily diversion at the rate of five thousand cubic feet of water per second;

(c) upon completion of the works authorized in this Article, the Commission shall proceed immediately to test such works under a wide range of conditions, and to report and certify to the Governments the effect of such

works, and to make recommendations respecting diversions of water from Lake Erie and the Niagara River, with particular reference to (1) the perpetual preservation of the scenic beauty of the Falls and Rapids, (2) the requirements of navigation in the Great Lakes System, and (3) the efficient utilization and equitable apportionment of such waters as may be available for power purposes; on the basis of the Commission's reports and recommendations, the Governments may by exchange of notes and concurrent legislation determine the methods by which these purposes may be attained.

ARTICLE X

The Governments agree that:

(a) each Government undertakes to make provision for the disposition of claims and for the satisfaction of any valid claims arising out of damage or injury to persons or property occurring in the territory of the other in the course of and in connection with construction by such Government of any of the works authorized or provided for by this Agreement;

(b) each Government is hereby released from responsibility for any damage or injury to persons or property in the territory of the other which may be caused by any action authorized or provided for by this Agreement, other than damage or injury covered by the provisions of paragraph (a) of this Article;

(c) each Government will assume the responsibility for and the expense involved in the acquisition of any lands or interests in land in its own territory which may be necessary to give effect to the provisions of this Agreement.

ARTICLE XI

This Agreement shall be subject to approval by the Parliament of Canada and the Congress of the United States of America. Following such approval it shall be ratified by His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, in respect of Canada and proclaimed by the President of the United States of America. It shall enter into force on the day of the exchange of the instrument of ratification and a copy of the proclamation, which shall take place at Washington.

In witness whereof the respective plenipotentiaries have signed this Agreement in duplicate and have hereunto affixed their seals.

Done at Ottawa, the nineteenth day of March, in the year of our Lord one thousand nine hundred and forty-one.

W. L. MACKENZIE KING [L.S.]

C. D. HOWE [L.S.]

JOHN E. READ [L.S.]

JAY PIERREPONT MOFFAT [L.S.]

ADOLF A. BERLE JR. [L.S.]

LELAND OLDS [L.S.]

ANNEX

CONTROLLED SINGLE STAGE PROJECT (238-242)

FOR WORKS IN THE INTERNATIONAL RAPIDS SECTION

(See Article 1, Paragraph 1 (a))

The main features of the Controlled Single Stage Project (238-242), described in detail with cost estimates in the report of the Temporary Great Lakes-St. Lawrence Basin Committees dated January 3, 1941, are as follows:

- (1) A control dam in the vicinity of Iroquois Point.
- (2) A dam in the Long Sault Rapids at the head of Barnhart Island and two power houses, one on either side of the international boundary, at the foot of Barnhart Island.
- (3) A side canal, with one lock on the United States mainland to carry navigation around the control dam and a side canal, with one guard gate and two locks, on the United States mainland south of Barnhart Island to carry navigation from above the main Long Sault Dam to the river south of Cornwall Island. All locks to provide 30 ft. depth of water on the mitre sills and to be of the general dimensions of those of the Welland Ship Canal. All navigation channels to be excavated to 27 ft. depth.
- (4) Dykes, where necessary, on the United States and Canadian sides of the international boundary, to retain the pool level above the Long Sault Dam.
- (5) Channel enlargement from the head of Galop Island to below Lotus Island designed to give a maximum velocity in the navigation channel south of Galop Island not exceeding four feet per second at any time.
- (6) Channel enlargement between Lotus Island and the control dam and from above Point Three Points to below Ogden Island designed to give a maximum mean velocity in any cross-section not exceeding two and one-quarter feet per second with the flow and at the stage to be permitted on the 1st of January of any year, under regulation of outflow and levels of Lake Ontario.
- (7) The necessary railroad and highway modifications on either side of the international boundary.
- (8) The necessary works to permit the continuance of 14 ft. navigation on the Canadian side around the control dam and from the pool above the Long Sault Dam to connect with the existing Cornwall Canal.
- (9) The rehabilitation of the towns of Iroquois and Morrisburg, Ontario.

All the works in the pool below the control dam shall be designed to provide for full Lake Ontario level but initially the pool shall be operated at maximum elevation 238.0.

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